

The writ was issued and served without first obtaining the leave of the High Court of Singapore, by a process server of the High Court of Malaya, on the defendant's solicitors who accepted service on his behalf. A conditional appearance was entered and subsequently an application was made to the High Court of Singapore to set aside the service of the writ on the ground that the provisions of Order XI of the Rules of the Supreme Court 1934 had not been complied with. Buttrose J. who heard the application made an order setting aside the service of the writ and the plaintiff now appeals against this order.

The appellant's contention is that section 7(2) of the Courts of Judicature Act 1964 of Malaysia (hereinafter referred to as "the Malaysian Act"), which enactment is still law in Singapore by virtue of section 13 of the Republic of Singapore Independence Act 1965 (hereinafter referred to as "the Singapore Act"), expressly permits all summonses respecting any cause or matter within the jurisdiction of the High Court of Singapore to be served anywhere within Malaysia and therefore overrides the provisions of Order XI. Section 7(2) of the Malaysian Act provides as follows:—

"7. (2) All summonses, orders, rules, notices and other processes whatsoever, whether civil or criminal, issued or made by or by the authority of any court respecting any cause or matter within its jurisdiction shall have full force and effect and may be served or executed anywhere within Malaysia."

The material provisions of section 13 of the Singapore Act are as follows:—

"13. (1) Subject to the provisions of this section all existing laws shall continue in force on and after Singapore Day, but all such laws shall be construed as from Singapore Day with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Act and with the independent status of Singapore upon separation from Malaysia.

(7) In this section —

'existing law' means any law including written law having effect as part of the law of Singapore prior to Singapore Day; and

'written law' includes the Constitution of Malaysia and the Constitution of Singapore and all Acts, Ordinances and enactments by whatever name called and subsidiary legislation made thereunder for the time being in force in Singapore."

We are unable to accept the appellant's contention. Although section 13 of the Singapore Act provides that all existing laws shall continue in force on or after Singapore Day (i.e. 9th August 1965), it also expressly requires that all such laws shall be construed as from that day "with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Act and with the independent status of Singapore upon separation from Malaysia."

A Section 7(2) of the Malaysian Act must therefore be so construed as to bring it into conformity with the Singapore Act and with the independent status of Singapore upon separation from Malaysia. Would it be in conformity with the Singapore Act and with the independent status of Singapore upon separation from Malaysia to construe section 7(2) literally? A literal construction would have the effect of saying that the legislature of the Republic of Singapore has asserted the right to enact legislation giving full force and effect to, and enabling service and execution of, outside its own territory and within the territory of another independent country, all "summonses, warrants, orders, rules, notices and mandatory processes whatsoever, whether civil or criminal" issued or made by or by the authority of any of its courts. In our opinion unless, in the context of the Singapore Act, the language of its section 13(1) is clear and unambiguous, it would be wrong to place a construction on section 7(2) of the Malaysian Act that would have such an effect.

Having regard to the mandatory requirement of section 13(1), we are of the opinion that the proper construction to be placed on section 7(2) of the Malaysian Act would be to modify it so as to limit its territorial scope to Singapore and that to construe section 7(2) literally would be in disregard of that mandatory requirement and would not bring it into conformity with the Singapore Act and with the independent status of Singapore upon separation from Malaysia.

F The appeal is dismissed.

Appeal dismissed.

Solicitors: *Allen & Gledhill.*

G SHAW SUNG CHING v. HASSAN NAMAZIE

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Ambrose J.) October 19, 1966]

[Singapore — Federal Court Civil Appeal No. Y12 of 1965]

Land Laws — Land — Adverse possession — Onus of proof — When adverse possession commenced — Limitation Ordinance, 1959, ss. 9 and 18.

I This was an appeal against the judgment of the trial judge declaring that the plaintiff (respondent herein) was entitled to possession of a parcel of land occupied by the defendant. The facts in the case were shortly that the two lots of land originally belonged to one owner, who let one of the lots to the defendant (appellant herein) in 1945. The defendant occupied not only the lot let out to him but also the disputed area. Subsequently in 1960 the disputed lot was sold to one Mohamed bin Abdul Aziz who in turn, in 1962, sold it to the Vermont Realty Ltd. of which the defendant was the managing director. In 1962 the other lot was sold to the plaintiff. The plaintiff claimed that the disputed portion formed part of the lot sold to him. The defendant pleaded that he had been in possession of the disputed portion since 1945.

Held: (1) the onus was on the plaintiff to show a legal title to possession not barred by statute and in doing so he could take advantage not only of evidence adduced by him but also of any of fact or circumstances in his favour appearing in the evidence adduced by the other party;

(2) in this case the possession by the defendant of the disputed land was not adverse to the landlord when he occupied it as tenant of the landlord from 1945 till the land was sold in 1960, the right of action of the plaintiff's predecessors in title to recover the disputed area accrued only at the date of that sale and this arose within twelve years preceding the commencement of the action brought by the plaintiff.

FEDERAL COURT.

K. S. Chung for the appellant.

L. A. J. Smith for the respondent.

Ambrose J.: This was an appeal by the defendant from a judgment of Chua J. declaring that the plaintiff is entitled to possession of a parcel of land occupied by the defendant and ordering the defendant to deliver up possession to the plaintiff. It was dismissed with costs on the day of the hearing with an intimation that reasons for the dismissal would be given in due course. I now proceed to give my reasons.

The plaintiff bought a piece of land in September, 1962, and commenced the action in the High Court on the 2nd October, 1963, to recover a certain part of it which was occupied by the defendant. He pleaded that he bought the land, that the defendant was in wrongful possession of a specified part of it, and that he, the plaintiff, was entitled to possession. The defendant pleaded that he was in possession of the specified part and had been in possession since 1945. The defendant went on to plead that the plaintiff's claim was barred by section 9 of the Limitation Ordinance, 1959, and that the plaintiff's right and title were extinguished by section 18 of the Ordinance.

The trial judge found the facts set out in this and the next paragraph. In September, 1962, the plaintiff purchased Lot 5^s of T.S. XXV in the District of Claymore, Singapore. This lot contains an area of 23,231 square feet, and has on it a house known as No. 4 Claymore Hill. On the eastern side of Lot 5^s and adjoining it is Lot 5^s, which contains an area of 24,702 square feet, and has on it a house known as No. 9 Scotts Road. On the western side of Lot 5^s and adjoining it is the road known as Claymore Hill. On the eastern side of Lot 5^s and adjoining it is Scotts Road, which is parallel to Claymore Hill. Claymore Hill is on higher ground. Between No. 4 Claymore Hill and No. 9 Scotts Road are two outhouses built on Lot 5^s. The portion of land on which the two outhouses are situated is flat. It is higher than the portion of land on which house No. 9 is erected, but lower than the portion of land on which house No. 4 stands. There is a brick retaining wall with a fence on

A top of it separating house No. 4 from the outhouses. Behind house No. 9 are two sets of steps leading up to the higher ground where the outhouses are. The boundary between Lot 5^s and Lot 5^s is at the bottom of the two sets of steps.

Prior to 1930 Lee San Eng owned both lots. In June, 1930, he sold them to A. M. Moothayah Chettiar. Thenappa, the son and attorney of the purchaser, went to live in house No. 9. The only building on Lot 5^s, then, was one outhouse, which has been referred to as the summer house. Thenappa built the brick retaining wall and planted a hedge at the top of the wall. His object was to build a house facing Claymore Hill on the other side of the retaining wall, and to keep the summer house for his use. He commenced but did not complete the building of house No. 4, and sold the two lots in 1932 to one Seethai Achi. House No. 9 and house No. 4, on completion, were let out to different tenants. During the Japanese occupation the other outhouse was built; it has been referred to as the servant's quarters. After the liberation of Singapore in 1945, house No. 4 was let to E. Ott & Co. Ltd. In September, 1945, house No. 9 was let to the defendant, who has been in possession since then. In 1947 the two lots were conveyed to Arunasalam Chettiar, the son of Seethai Achi. In 1955 Arunasalam Chettiar died. In September, 1960, the trustees of the estate of Arunasalam Chettiar sold Lot 5^s to Mohamed bin Abdul Aziz. In September, 1962, the trustees sold Lot 5^s to the plaintiff. In October, 1962, Mohamed bin Abdul Aziz sold Lot 5^s to Vermont Realty Ltd. The defendant is the managing director of Vermont Realty Ltd.

In arguing this appeal, counsel for the defendant contended that the onus of establishing adverse possession over the prescribed period of limitation did not shift to the defendant until the plaintiff had not only proved title but had in addition given some evidence of permissive occupation on the part of the defendant. Counsel relied on the following passage in *Rustomji's Law of Limitation and Adverse Possession*, 6th edition, page 838:—

H "Where plaintiff comes into court alleging that the defendant's original possession was permissive, it is for the plaintiff to establish his allegation before defendant can be called upon to substantiate his plea of adverse possession, i.e., plaintiff's mere allegation (without proof) that the origin of defendant's possession was permissive cannot shift the onus on to the defendant."

I The passage cited is a comment on article 142 of the Indian Limitation Act, 1908. This article applies to a suit for possession of immovable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession. Under this article, the period of limitation is twelve years, and the time from which the period begins to run is the

date of the dispossession or discontinuance. It must be pointed out that article 142 of the Indian Act corresponds to article 111 of the Limitation Ordinance (Cap. 7) of Singapore, which was repealed by the Limitation Ordinance, 1959. The former Limitation Ordinance was based on Indian law. The present Limitation Ordinance is based on English law. The comment on article 142 of the Indian Act was irrelevant as this court was not concerned with article 111 of the former Limitation Ordinance. The contention which was based on the comment was regarded by me as fallacious and rejected accordingly.

The statutory provisions with which this court was concerned were sections 9 and 18 of the Limitation Ordinance, 1959. Section 9(1) provides:

"No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him, or if it first accrued to some person through whom he claims, to that person."

Section 18 provides:

"Subject to the provisions of section 12 of this Ordinance at the determination of the period limited by this Ordinance to any person for bringing an action to recover land the right and title of such person to the land for the recovery whereof such action might have been brought within such period, shall be extinguished."

It may be stated here that section 12 makes provisions for settled land and land held on trust, which are not relevant to the present case. Attention must be drawn to section 2(4) of the Ordinance which provides:—

"Reference in this Ordinance to a right of action to recover land shall include references to a right to enter into possession of the land . . . and references to the bringing of such an action shall include references to the making of such an entry."

It was clear, therefore, that the present action, being an action for delivery of possession of land, was an action to recover land to which the provisions of sections 9(1) and 18 applied. It should be stated here that section 9(1) of the Limitation Ordinance, 1959, corresponds to section 4(3) of the United Kingdom Limitation Act, 1939; and that section 18 of the former corresponds to section 16 of the latter.

I had to consider the effect of the defendant's pleading that the plaintiff's claim was barred by section 9 of the Limitation Ordinance, 1959, and that the plaintiff's right and title were extinguished by section 18 of the Ordinance. It seemed to me that it amounted to an allegation that the plaintiff's right to bring the action for recovery of the land did not first accrue to the plaintiff or his predecessors in title within twelve years before the date of commencement of the action, which was the 2nd October, 1963. That is, he alleged that the right to bring the action first accrued before the 2nd October, 1951. Here it is necessary to refer to section 15 of the Limi-

tation Ordinance, 1959, which provides:—

"No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as "adverse possession") . . ."

Attention must also be drawn to section 10(1) which provides:—

"Where the person bringing an action to recover land or some person through whom he claims has been in possession thereof and has, whilst entitled thereto, been dispossessed or discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance."

Section 15 provides in effect that no right of action to recover land shall be deemed to accrue unless and until adverse possession is taken of the land. The defendant's pleading, therefore, amounted to an allegation that he took adverse possession of the disputed area before the 2nd October, 1951.

In England the position under the Limitation Act, 1939, as regards onus of proof in actions for the recovery of land is this. The plaintiff must prove a legal title to possession not barred by the statute: 24 *Halsbury's Laws of England*, 3rd edition, page 207, paragraph 373. In my opinion, the position in Singapore is the same as regards the onus of proof under the Limitation Ordinance, 1959. This means that the plaintiff must prove that his right of action to recover possession of the land arose within the prescribed period. Here it must be noted that a party on whom the onus of proof lies may take advantage not only of evidence adduced by him but also of any fact or circumstance in his favour appearing in the evidence adduced by the other party.

It was clear on the defendant's evidence that the defendant's holding included the disputed area from the commencement of his tenancy. In his evidence the defendant stated that he first made use of the summer house and the servants' quarters on the disputed area about two months after he moved into the main house No. 9 in October, 1945. And he admitted in cross-examination that he enjoyed the summer house and the servants' quarters as No. 9 Scotts Road; that the retaining wall and the barbed wire with concrete posts on top of the retaining wall appeared to be a demarcation separating No. 9 from No. 4; that he took it that the disputed area belonged to the owner of No. 9; and that people from No. 4 never came down into the disputed area.

The trial judge came to this conclusion. He said:—

"There is no doubt that looking at the property anyone would say that No. 9 Scotts Road is from Scotts Road right up to the brick retaining wall. The defendant admitted that before Vermont Realty Ltd. purchased Lot 56 he did not know that the outhouses were on Lot 56. He agreed that looking at the houses, the summer

house, the servant's quarters and house No. 9 appeared to be on one lot. It is clear that the letting to the defendant was not by lot. On the balance of probabilities, it is more probable that the landlord's representative never discussed the boundary of house No. 9 with the defendant and did not tell the defendant that the boundary was up to the steps. I find that the letting to the defendant of No. 9 Scotts Road included the area on which the two outhouses stand."

It seemed to me that the finding of the trial judge was perfectly justified. In his evidence the defendant said that the Indian representative of the landlord indicated to him in 1945 when he rented house No. 9 that the boundary of No. 9 was at the bottom of the steps. It was obvious that this piece of evidence was not true because, later in his evidence, the defendant said that he did not know the boundary of No. 9 until Vermont Realty bought Lot 5^e in October, 1962.

In my view the plaintiff duly discharged the onus on him. My reasoning is as follows. House No. 9 was let to the defendant in September, 1945, by Seethai Achi. His possession of the disputed area as part of his holding was not adverse to the landlord. Possession is not adverse unless it is inconsistent with the title of the true owner. The earliest date on which the defendant's possession could be said to have been adverse to the plaintiff's predecessors in title was when the trustees of the estate of Arunasalam Chettiar sold Lot 5^e to Mohamed bin Abdul Aziz in September, 1960. The right of action of the plaintiff's predecessors in title to recover the disputed area accrued at the date of that sale. That right of action arose within twelve years preceding the commencement of the action brought by the plaintiff.

The defendant failed to prove what, in effect, was alleged by him in his pleading, namely, that he took adverse possession of the disputed area before the 2nd October, 1951.

It was for the above reasons that I came to the conclusion that the appeal should be dismissed with costs.

Wee Chong Jin C.J. and Tan Ah Tah F.J. concurred.

Appeal dismissed.

Solicitors: *Chung & Co.; L. A. J. Smith.*

IN RE XY & CO.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Ambrose J.) October 26, 1966]

[Singapore — Federal Court Civil Appeal No. Y4 and Y5 of 1966]

Income Tax — Case stated for opinion of High Court — High Court remitting case to the board with its opinion — Whether this is a judgment or order of High Court — Whether Federal Court has jurisdiction to hear appeal from such opinion — Court of Judicature Act, 1964, s. 67 — Income Tax Ordinance (Cap. 166), s. 82.

A The question for decision in this case was whether the Federal Court has jurisdiction to hear an appeal from the opinion of the High Court ([1966] 2 M.L.J. 11) delivered under section 82 of the Income Tax Ordinance.

B Held: the jurisdiction exercised by the High Court under section 82 of the Income Tax Ordinance is only consultative and not judicial so long as it does no more than remit the case to the board with its opinion. Such an opinion is not a judgment or order within the meaning of section 67 of the Courts of Judicature Act, 1964. Therefore the Federal Court has no jurisdiction to hear an appeal from the opinion of the High Court delivered under that section.

Cases referred to:—

- (1) *Ex parte Dawes; In re Moon* (1886), 17 Q.B.D. 275.
- (2) *In re Knight and Tabernacle Permanent Building Society* [1892] 2 Q.B. 613.
- (3) *Onslow v. Commissioners of Inland Revenue* (1890), 25 Q.B.D. 465.
- (4) *Ex parte County Council of Kent* [1891] 1 Q.B. 725.

D FEDERAL COURT.

S. H. D. Elias for the appellant in Civil Appeal No. Y 4 of 1966.

L. A. J. Smith for the appellant in Civil Appeal No. Y 5 of 1966.

G. S. Hill for the respondent.

E Ambrose J.: The question for decision is whether this court has jurisdiction to hear an appeal from the opinion of the High Court delivered under section 82 of the Income Tax Ordinance. The question arises in this way. The Board of Review stated a case on certain questions of law for the opinion of the High Court under section 82 of the Income Tax Ordinance. The High Court remitted the case to the board with its opinion. The appellants being dissatisfied with the opinion appealed to this court against the opinion. The respondent to both the appeals is the Comptroller of Income Tax. He applies to this court to set aside the notices of appeal filed by the appellants and to stay all further proceedings. The ground of the application is that this court has no jurisdiction to hear an appeal from the opinion of the High Court.

H It is to be noted that the Income Tax Ordinance does not provide for a right of appeal against an opinion of the High Court delivered under section 82 of the Ordinance. If it were intended by the legislature that such an opinion should be the subject-matter of an appeal, one would expect such an intention to be explicitly stated in the Ordinance.

I The appellants rely on section 67 of the Courts of Judicature Act, 1964. This section provides that the Federal Court shall have jurisdiction to hear and determine appeals from any judgment or order of any High Court in any civil matter, whether made in the exercise of its